80-143

Supreme Court, U. S.
FILED
JUL 29 1980
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE
UNITED STATES

1980 TERM No._____

THELMA M. DETWEILER, Petitioner

vs.

MERRILL M. DETWEILER, Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF
PENNSYLVANIA

SANFORD H. COHEN, ESQUIRE
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The Petitioner, Thelma M. Detweiler, respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of Pennsylvania, entered in this proceeding on May 1, 1980.

OPINIONS BELOW

There was no formal opinion of the Supreme Court of Pennsylvania. Its order denying the Petition for Allowance of Appeal is set forth in Appendix A.

JURISDICTION

The judgment of the court below was entered on May 1, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3) and 28 U.S.C. 2403(b) (Intervention by United States or a State; constitutional question.)

QUESTION PRESENTED

(1) Whether the Petitioner was deprived of due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution when the Supreme Court of Pennsylvania denied a petition for allocatur in a divorce proceeding subsequent to the passage of a Divorce Reform Code Act No. 1980-26 which substantially altered the right of equitable distribution of marital property and introduced post-divorce alimony.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment XIV - Section 1

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Pennsylvania Divorce Reform Code Act 1980-26 - Section 103:

> "...The provisions of this Act shall not affect any suit or action pending, but the same may be proceeded with and concluded either under the laws in existence when such suit or action was instituted, notwithstanding the repeal of such laws by this act, or upon application granted, under the provisions of this Act. The provisions of this Act shall not apply to any case in which a decree has been rendered prior to the effective date of the Act..."

Sections 401(d) through (f):

> "...(d) In a proceeding for divorce or annulment, the court shall, upon request of either party, equitably divide, distribute or assign the marital property between the parties without regard to marital misconduct in such proportions as the court deems just after considering all relevant factors including:
>
> (1) Length of the marriage.
> (2) Any prior marriage of either party.
> (3) The age, health, station,

amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties.

(4) The contribution by one party to the education, training or increased earning power of the other party.

(5) The opportunity of each party for future acquisitions of capital assets and income.

(6) The sources of income of both parties, including but not limited to medical, retirement, insurance or other benefits.

(7) The contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker.

(8) The value of the property set apart to each party.

(9) The standard of living of the parties established during the marriage.

(10) The economic circumstances of each party at the time the division of property is to become effective.

(e) For purposes of this chapter only, "marital property"means all property acquired by either party during the marriage except:

(1) Property acquired in exchange for property acquired prior to the marriage except for the increase in value during the marriage.

(2) Property excluded by valid agreement of the parties entered into before, during or after the marriage.

(3) Property acquired by gift, bequest, devise or descent except for the increase in value during the marriage.

(4) Property acquired after separation until the date of divorce, provided however, if the parties separate and reconcile, all property acquired subsequent to the final separation until their divorce.

(5) Property which a party has sold, granted, conveyed or otherwise disposed of in good faith and for value prior to the time proceedings for the divorce are commenced.

(6) Veterans' benefits exempt from attachment, levy or seizure pursuant to the act of September 2, 1958, Public Law 85-857, 72 Statute 1229, as amended, except for those benefits received by a veteran where such veteran has waived a portion of his military retirement pay in order to receive Veterans' Compensation.

(7) Property to the extent to which such property has been mortgaged or otherwise encumbered in good faith for value, prior to the time proceedings for the divorce are commenced.

(f) All property, whether real or personal, acquired by either party during the marriage is presumed to be marital property regardless of whether title is held individually or by the parties in some form of co-ownership such as joint tenancy, tenancy in common or tenancy by the entirety. The presumption of marital property is overcome by a showing that the property was acquired by a method listed in subsection (e)."

"Section 501. Alimony.

(a) The court may allow alimony, as it deems reasonable, to either party, only if it finds that the party seeking alimony:

(1) lacks sufficient property, including but not limited to any property distributed pursuant to Chapter 4, to provide for his or her reasonable needs; and

(2) is unable to support himself or herself through appropriate employment.

(b) In determining whether alimony is necessary, and in determining the nature amount, duration, and manner of payment of alimony, the court shall consider all relevant factors including:

(1) the relative earnings and earning capacities of the parties.

(2) the ages, and the physical, mental and emotional conditions of the parties.

(3) The sources of income of both parties including but not limited to medical, retirement, insurance or other benefits.

(4) The expectancies and inheritances of the parties.

(5) The duration of the marriage.

(6) The contribution by one party to the education, training or increased earning power of the other party.

(7) The extent to which it would be inappropriate for a party, because said party will be custodian of a minor child, to seek employment outside the home.

(8) The standard of living of the parties established during the marriage.

(9) The relative education of the parties and the time necessary to acquire sufficient education or training to enable the party seeking alimony to find appropriate employment.

(10) The relative assets and liabilities of the parties.

(11) The property brought to the marriage by either party.

(12) The contribution of a spouse as homemaker.

(13) The relative needs of the parties.

(14) The marital misconduct of either of the parties during the marriage; however, the marital misconduct of either of the parties during separation subsequent to the filing of a divorce complaint shall not be considered by the court in its determinations relative to alimony."

Article 1, Section 1 - Inherent Rights of Mankind - The Constitution of the Commonwealth of Pennsylvania

> "All men are born equally free and independent, and having certain inherent and endefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation."

STATEMENT OF THE CASE

The substantive grounds for the initiation of the action in divorce by the Respondent in the lower courts of Pennsylvania are not at issue here. However, a brief description of the procedural history of the case in the Appellate courts of Pennsylvania in relation to the enactment of the Divorce Reform Code in April, 1980 is essential to an understanding of the legal issue presented before this Honorable Court. About October, 1978, the Petitioner appealed the decision of the lower court which entered a decree in divorce to the Superior Court of Pennsylvania. The Superior Court of Pennsylvania, on or about January 4, 1980 affirmed the decision of the lower court. On

March 6, 1980, the Petitioner filed a Petition for an Allowance to File an Appeal Nunc Pro Tunc, in the Supreme Court of Pennsylvania, which the Court denied on May 1, 1980. While the Petition for an Allowance to File an Appeal Nunc Pro Tunc was pending in the Supreme Court of Pennsylvania, the Legislature of the Commonwealth of Pennsylvania with the approval of the chief executive of Pennsylvania enacted the Divorce Reform Code (Act 26 of 1980), the first statute in the Commonwealth of Pennsylvania which effected drastic changes especially in the area of assignment of marital property for the first time in nearly two hundred (200) years.

In discussing the applicability of the provisions of the Pennsylvania Divorce Reform Code to cases presently pending and those cases in which a decree

in divorce had already been rendered, the statute draws a distinction and excludes those cases in which a decree in divorce has issued prior to the date of the statute's effectiveness, July 1, 1980.

In the instant case, the denial by the Supreme Court of Pennsylvania of the Petition for an Allowance to file an Appeal on May 1, 1980 in essence destroyed the right of the Petitioner to file an election pursuant to the provisions of the Pennsylvania Divorce Reform Code so as to preserve her right to seek alimony subsequent to divorce and to seek equitable distribution of the marital property, two features which were non-existent under the prior code and case law.

REASONS FOR GRANTING THE WRIT

I. This case presents a substantial federal question.

The issue at stake in the case at bar rests upon whether the Petitioner has a vested property interest in a cause of action which was enacted by the Legislature on April, 1980 and was to become effective on July 1, 1980 and whether the decision by the Supreme Court of Pennsylvania on May 1, 1980 which dismissed the Petitioner's appeal was violative of due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution and the Constitution of the Commonwealth of Pennsylvania.

In essence, the Petitioner, Thelma M. Detweiler, was barred from

filing an election to proceed in accordance with the Pennsylvania Divorce Reform Code, Act 26-1980 a right granted to all parties whose actions in divorce were presently pending in the lower courts of Pennsylvania (Section 103 of the Pennsylvania Divorce Reform Code - Act 26, 1980)

The recently enacted statutory provisions altered substantially the rights of the marital parties to seek a division of the marital property and to seek alimony subsequent to the entry of the decree in divorce. (Section 401(d) (f) and Section 502 of the Pennsylvania Divorce Reform Code).

Under the prior statute and common law under Pennsylvania (23 P.S. et seq.), the courts, distributed the marital property with respect to whether

the title was held individually or in some form of co-ownership. (DeFlorido v. DeFlorido, 459 Pa. 641, 331 A.2d 174 (1975)

The Pennsylvania Divorce Reform Code abolished these prior rules pertinent to the distribution of marital property and introduced the concept of "equitable distribution" (Pennsylvania Divorce Reform Code, Section 401) Thus, the financial position of the Petitioner would be enhanced if she were afforded the right to proceed under the newly enacted statute.

Dismissal of the Petitioner's appeal on May 1, 1980 shortly after the enactment of the Divorce Reform Code in April, 1980 deprived the Petitioner of due process of law in contravention of the Fourteenth Amendment to the United States Constitution and the Constitution

of the Commonwealth of Pennsylvania (see Gibbes v. Zimmerman, 290 U.S. 326, 78 L. Ed. 342, 54 S.Ct. 140 (19 33). If the Supreme Court of Pennsylvania had delayed two months in rendering its decision to dimiss Petitioner's appeal Petitioner's election to proceed under the recently enacted statute would have been preserved as her cause of action would have been pending on July 1, 1980. (Section 103 of the Pennsylvania Divorce Reform Code.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment of the Supreme Court of Pennsylvania.

Respectfully submitted:

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SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

456 City Hall
Phila., PA

May 6, 1980

Sanford H. Cohen, Esquire

Re: Thelma Detweiler v. Merrill Detweiler - No. 110 E.D. Misc. Docket 1980

Dear Mr. Cohen:

This is to advise you that on May 1, 1980, the Supreme Court entered its Order denying the Petition for Allowance of Appeal in the above-captioned matter.

Very truly yours,

SALLY MRVOS
Prothonotary

SM:br
cc: Barry Kerchner, Esquire

APPENDIX A